

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 91-479-C - ORDER NO. 91-1111  
DECEMBER 20, 1991

IN RE: Application of Tri\*Tel Communications     )  
for a Certificate of Public Convenience     ) ORDER  
and Necessity.     ) GRANTING  
   ) CERTIFICATE

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Tri\*Tel Communications (Tri\*Tel or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. Tri\*Tel's Application was filed pursuant to S.C. Code Ann. §58-9-280 (1976) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Tri\*Tel to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of Tri\*Tel's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Tri\*Tel complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. Petitions to Intervene were filed by Southern Bell Telephone & Telegraph

Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced on November 3, 1991, at 2:30 p.m. in the Commission's Hearing Room. The Honorable Rudolph Mitchell presided. John F. Beach, Esquire, represented Tri\*Tel. Fred A. Walters, Esquire, represented Southern Bell; Carl F. McIntosh, Esquire, represented the Consumer Advocate; and Gayle B. Nichols, Staff Counsel, represented the Commission Staff.

SOUTHERN BELL'S MOTION TO DISMISS

At the beginning of the hearing, Southern Bell moved to dismiss Tri\*Tel's Application on several grounds. First, Southern Bell argued that the Application was deficient in that it failed to meet the notice and filing requirements of S.C. Code Ann. §58-9-250, -350, and -570 (1976, as amended). Second, Southern Bell argued that the Application should be dismissed insofar as it requested authority to potentially resell Software Defined Network (SDN) and SDN-type services.<sup>1</sup> Southern Bell explained that underlying carriers which offer SDN and SDN-type services only have interLATA authority and are required to reimburse the local exchange company for accidental or incidental intraLATA use.<sup>2</sup>

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1. SDN is offered in AT&T Communications of the Southern States, Inc.'s Custom Network Services Tariff. MCI and US Sprint offer similar services.

2. Apparently, Southern Bell is concerned that because underlying carriers are unable to block SDN and SDN-type services, resellers of these services will interfere with the local exchange company's business by acquiring the ability to resell intraLATA long distance service.

The Commission has considered each of the arguments presented by Southern Bell in support of its motion to dismiss. While it recognizes Southern Bell's concern over the potential competition produced by the increasing number of companies authorized to resell long distance toll service, the Commission finds that Southern Bell's motion to dismiss the present Application should be denied.

First, the Commission finds that Tri\*Tel's Application fully complies with all relevant statutory provisions. Contrary to Southern Bell's argument, Section 58-9-520(Supp. 1990) only requires a telephone utility to provide the Commission with thirty days advance notice of its intention to file a new rate or tariff which will affect its general body of subscribers. Here, Tri\*Tel seeks a certificate of public convenience and necessity under Section 58-9-280 to operate as a telephone utility in South Carolina. Tri\*Tel is seeking initial authority to operate as a utility and approval of its initial rates and charges; it is not seeking authority to establish new rates for its customers. Accordingly, the Commission determines that Section 58-9-250 is inapplicable.

Likewise, the Commission concludes that Section 58-9-350 (1976) is inapplicable. Section 58-9-350 provides telephone utilities with the right to charge depreciation as an annual operating expense. Alternatively, the Commission may require a telephone utility to charge depreciation as an operating expense. This Commission has not required Tri\*Tel to submit depreciation as an operating expense. Moreover, despite its ability to so choose,

Tri\*Tel has not elected to charge depreciation as an operating expense. Tri\*Tel's Application has not violated Section 58-9-350 by the Company's decision not to submit depreciation as an expense or by the Commission not requiring the Company to submit depreciation as an expense.

Finally, the Commission determines that Section 58-9-570 (1976) is inapplicable to Tri\*Tel's Application for a certificate of public convenience and necessity and for the establishment of initial rates and charges. Section 58-9-570 appears under Article V, Chapter 9 of Title 58 of the South Carolina Code of Laws. Article V is entitled "Telephone Companies - Changes in Rates." Since Tri\*Tel is seeking authority to operate as a telephone utility in South Carolina and authority to charge its initial rates, the Commission concludes Section 58-9-570 is inapplicable.

Second, the Commission denies Southern Bell's motion to dismiss the Application insofar as it seeks authority to resell SDN or SDN-type services. The Commission concludes that Tri\*Tel's Application for a certificate of public convenience and necessity is not the appropriate forum in which to consider whether SDN and SDN-type services may be purchased by resellers of long-distance toll service. As with all other resellers, if Tri\*Tel's Application is granted, it may only resell those services of facility-based carriers which have been approved for resale on an intrastate basis. Accordingly, the Commission denies Southern Bell's motion to dismiss.

EVIDENCE FROM THE RECORD

Tri\*Tel's Application states that the Company is a joint venture partnership formed under the laws of the State of North Carolina for the purpose of providing resold long distance service on an intrastate, interLATA and, to the extent authorized, intraLATA basis. The Application further indicates that Tri\*Tel has authority to resell long distance services in North Carolina and Virginia. The Application states that Tri\*Tel intends to utilize the maximum rate tariff structure and has composed its tariff with rates set by Southern Bell for intraLATA traffic and by AT&T for interLATA traffic. Tri\*Tel will set its actual rates at or below these maximums. Tri\*Tel has attached a series of financial exhibits to its Application as indication of its financial security.

Tri\*Tel presented the testimony of Leo Wentzel in support of its Application. Mr. Wentzel explained Tri\*Tel's request for certification to operate as a reseller of interexchange intrastate, interLATA and, to the extent authorized by the Commission, intraLATA, telecommunications services in South Carolina. Mr. Wentzel explained that the Company presently wishes to resell the toll services of Southern Bell, Telecom USA, Litel Telecommunications, Inc., and MCI. Tri\*Tel proposes to provide WATS, MTS, private line, foreign exchange lines, and other services which this Commission has approved for resale. Tri\*Tel will ultimately be responsible for billing, trouble reporting, and customer services. Mr. Wentzel testified Tri\*Tel does not intend to

provide operator service. Mr. Wentzel explained the Company would like to serve small to medium business customers which have between \$100 and \$6,000 in monthly long distance charges. Finally, Mr. Wentzel testified that Tri\*Tel was aware of the Commission Order No. 86-793, Docket No. 86-187-C, requiring interexchange companies to compensate the local exchange carriers for unauthorized intraLATA long distance traffic and that Tri\*Tel would abide by the Order.

C. L. Addis testified on behalf of Southern Bell. Mr. Addis testified that Tri\*Tel's authority to resell services should be limited to the resale of WATS, MTS, Foreign Exchange Services, Private Line Services, or to other services authorized for intraLATA resale by the Commission. Mr. Addis explained it was Southern Bell's position that services with the network features of SDN or SDN-like services were not approved for resale by this Commission. In addition, Mr. Addis stated that Tri\*Tel should be required to compensate the local exchange carriers for incidental unauthorized transmission of intraLATA long distance traffic in accordance with Order No. 86-793.

After full consideration of the applicable laws, the Application, and of the evidence presented by Tri\*Tel, the Consumer Advocate, Southern Bell and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law.

FINDINGS OF FACT

1. Tri\*Tel is a joint venture partnership formed under the laws of the State of North Carolina and wishes to operate as a non-facilities based reseller of interexchange services on an interLATA and, to the extent authorized, intraLATA, basis in South Carolina.

2. Tri\*Tel has the experience, capability, and financial resources to provide the services as described in its Application and through Wentzel's testimony at the hearing.

3. Southern Bell and other local exchange carriers (LECs) should be compensated for any unauthorized intraLATA calls completed through Tri\*Tel's service arrangements.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a certificate of public convenience and necessity should be granted to Tri\*Tel to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Services, or any other services authorized for resale by tariffs of facility-based carriers approved by the Commission.

2. That all intrastate intraLATA calls must be completed over intraLATA WATS, MTS, private and foreign exchange lines or any other service of facility based carriers approved for resale on an intraLATA basis. Any intraLATA calls not completed in this manner would be considered unauthorized traffic and the Company will be

required to compensate LEC's for any unauthorized intraLATA calls it carries pursuant to Commission Order No. 86-793 in Docket No. 86-187-C.

3. The Commission adopts a rate design for Tri\*Tel for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate level with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communication Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts Tri\*Tel's proposed maximum rate tariffs.

4. Tri\*Tel shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Tri\*Tel shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of Tri\*Tel's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1990).

5. Tri\*Tel shall file its tariff and an accompanying price list to reflect the Commission's findings within thirty (30) days of the date of this Order. Specifically, Tri\*Tel shall amend its tariff provisions relating to Special Services so that the notice requirements will comport with the Commission's requirements. The



fourteen day notice period proposed in the Company's tariff should be modified to comply with the usual notice provisions for special assemblies or new service offerings.

6. Tri\*Tel is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to Tri\*Tel's resale of services, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

8. Tri\*Tel shall resell the services of only those interexchange carriers or LEC's authorized to do business in South Carolina by this Commission. If Tri\*Tel changes underlying carriers, it shall notify the Commission in writing.

9. Tri\*Tel shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

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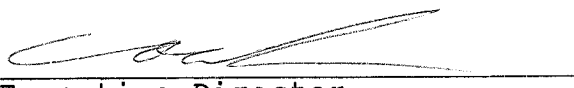
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10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Deputy Executive Director  
(SEAL)

**ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS**

**FOR INTEREXCHANGE COMPANIES AND AOS'S**

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR 12  
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

\*THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION  
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,  
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR  
ENDING \_\_\_\_\_.

\*THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT  
PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT  
AND EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR  
ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE  
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS  
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE  
INVESTMENT (SEE #3 ABOVE).